Supreme Court, U. S.
FILED
JAN 25 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., *et al.*,
Petitioners

v.

CHARLES T. WOLF, *et al.*,
Respondents

PETITIONERS' REPLY MEMORANDUM

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The Brief for Respondents in Opposition ("Resp. Brief") makes several misleading or mistaken assertions to which a short reply is warranted:

1. Respondents argue that "Georgia courts have long recognized a presumption of majority representation in all church property disputes." Resp. Brief at 7. With regard to hierarchical churches, this statement simply is not true. Respondents have not cited and we have not found a single instance prior to the Georgia Supreme Court's decision on remand in this case in which the concept of a presumption of majority representation was even discussed in a hierarchical church case in Georgia.[1]

[1] *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979), is cited by respondents as a case in which "the minority faction of a local hierarchical church was able to overcome the presumption of majority rule." Resp. Brief at 9. In fact, the Supreme Court of Georgia in *Crumbley* found for the *general* church, whose trustees were a party and whose disciplinary rule provided that the general

This is particularly important because petitioners had been given no notice by prior Georgia cases that a majority of the congregation of the Vineville Presbyterian Church would be presumed to control their church's property. Nor could they have known how to rebut such a presumption. Indeed, based upon the decision below, they still do not know exactly how to provide for control by a faction loyal to the Presbyterian Church in the United States ("PCUS"), without in effect deeding all property to PCUS.

Respondents argue that "[u]nlike the general church involved in *Crumbley*, PCUS in the instant case failed to adopt any measures to ensure control over local church property either directly or by recognizing a local faction as being entitled to possession." Resp. Brief at 9. That, too, is incorrect. The PCUS *Book of Church Order* ("BCO") provides a procedure for the resolution of disputes and gives the General Assembly final authority to suppress schismatical contentions and disputations.[2] *See*

church "shall hold all church property, regardless if all members vote to change the church to some other faith." *Id.*, 254 S.E.2d at 333. The majority rule presumption is a technique for determining which faction is the true representative of a local congregation following a schism. The *Crumbley* opinion not only fails to mention any such presumption, but it specifically declines to "make the forbidden determination of which is the 'true' Franklin Tabernacle." *Id.* Respondents, like the Supreme Court of Georgia, seem unwilling to accept this Court's opinion that the instant case "contains a significant complicating factor" absent in cases in which the general church is a party. Appendix to the Petition for a Writ of Certiorari ("App.") at 33a.

[2] Respondents assert that the BCO provides for property to be dealt with by local trustees solely at the direction of the local church congregation. *See* Resp. Brief at 9. What respondents fail to mention is that the section of the BCO to which they refer also provides that the "powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons." JA 35. Among the powers and duties of the Session is the obligation "[t]o observe and carry out the lawful injunctions of the higher [church] courts." JA 52. Moreover, the BCO specifically provides that the Presbytery has power "[t]o review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church." JA 55.

Joint Appendix ("JA") at 55, 61. Moreover, prior to the schism in this case, the General Assembly of PCUS had interpreted the church constitution so as to leave no doubt as to the position of the denomination with respect to the ownership, use, and control of church property.[3] Nevertheless, the Georgia Supreme Court ignored petitioners' request that this case be remanded to the trial court for the taking of further evidence on this point so that petitioners would have an opportunity to rebut any presumption that PCUS is a "majority rule" church. *See* Petition for a Writ of Certiorari ("Cert. Petition") at 14-15. Thus, what this Court intended to be a *rebuttable* presumption has become in Georgia effectively irrebuttable.

In short, the Georgia Supreme Court's two-judge opinion announces a new rule of majority representation.

[3] An excerpt from the lengthy statement adopted by the 1971 General Assembly is illustrative:

> The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. *In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.*
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> * * *
>
> *A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (preface to the Form of Government, III, 1, 5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.* [Emphasis added.]

While prospective application of such a rule might comport with the First Amendment if the "method of overcoming the majoritarian presumption * * * does not impair free exercise rights or entangle the civil courts in matters of religious controversy," App. 35a, we dispute respondents' contention that the rule announced in the Georgia Supreme Court's two-judge opinion is "fully consistent with the mandate of this Court." Resp. Brief at 10.

2. Respondents have incorrectly labeled as "hypertechnical"—but otherwise failed to rebut—petitioners' showing that the two-judge opinion below was "no ruling at all," and thus was in violation of this Courts' mandate. *See* Cert. Petition at 7; Resp. Brief at 10. Respondents attempt to show, by their analyses of Georgia law on "law of the case" and the "full bench rule," that we are mistaken in asserting that the opinion below represented the views of only the two (of seven) judges who neither dissented nor concurred in the judgment only. The most glaring hole in their argument is their total failure to reconcile the Rules of the Supreme Court of Georgia with their position. As we pointed out, Rule 58 of that court, adopted August 1, 1979, provides in part that "Justices concurring specially or in the judgment only do not agree with all that is said in the opinion." Cert. Petition at 7.

Respondents argue that all but the dissenting judge concurred in the *holding* that Georgia has adopted a rule of majority representation and that the presumption may be overcome by the application of neutral principles of law. Resp. Brief at 12. Petitioners must emphasize, however, that to concur in the judgment means only that one agrees with the outcome. The four judges who concurred in the judgment could have done so for any number of reasons while still disagreeing heartily with the majoritarian presumption language in the two-judge opinion.

This Court remanded this case for an authoritative articulation of Georgia law so that the application of that law in this case could be measured against the requirements of the Constitution. The Georgia Supreme Court has failed to comply with that mandate.

3. Respondents assert that the *Book of Order* of the United Presbyterian Church in the United States of America ("UPCUSA")—a church unrelated to PCUS—"has long contained provisions which are sufficient under the neutral principles approach to place ultimate authority over local property in the denomination." Resp. Brief at 13. Respondents suggest that if PCUS were to adopt similar provisions, the Georgia courts would "undoubtedly find under *Crumbley* and this case that a neutral principle existed which has the effect of overcoming the presumption of majority representation." *Id.* at 14.

Unfortunately for all members of hierarchical churches, the state of the law is far more unsettled than respondents' facile remedies would suggest.[4] In fact, the very provisions of the UPCUSA Constitution which respondents recommend to insure general church control over local

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[4] *See* Cert. Petition at 15 n.10. Petitioners have recently learned of two additional cases which discuss this Court's opinion in the instant case. The Court of Appeal of Louisiana, Third Circuit, read *Jones* v. *Wolf* as turning on "whether the deed or the corporate charter or constitution contain [sic] language of trust in favor of the general church." *Louisiana District Council of the Assemblies of God, Inc.* v. *Victory Temple Assembly of God*, No. 10006, slip op. at 9 n.1 (La. Ct. App., Sept. 20, 1979).

The Appellate Court of Illinois, meanwhile, found a suit to enjoin demolition of a church to be a question of church polity over which civil courts lack jurisdiction, citing *Jones* v. *Wolf* as reaffirming the restricted role of civil courts in religious property disputes. *Galich* v. *Catholic Bishop of Chicago*, 75 Ill.App.3d 538, 394 N.E.2d 572 (1979).

Moreover, we are advised that respondents in *Mills* v. *Baldwin*, 362 So. 2d 2 (Fla. 1978), *vacated and remanded*, 99 S.Ct. 3105, *aff'd on remand*, No. 51,588 (Fla. 1979), intend to file shortly with this Court a Petition for a Writ of Certiorari. *See* Cert. Petition at 15 n.10 for a discussion of that case.

property were held by a California Court of Appeal to be insufficient for that purpose. In *Presbytery of Riverside* v. *Community Church of Palm Springs*, the California court, in awarding church property to a withdrawing majority faction, purportedly applied a neutral principles analysis but found that "those provisions in The Book of Order that at first blush might be taken to support appellants' position (presbytery's permission required to sell, lease or encumber local church property; property to inure to the benefit of UPCUSA in the event of abandonment or dissolution of the local church) give rise to conflicting inferences, for if the property of a local church were in fact held in trust for the general church, those provisions would appear to be unnecessary." 89 Cal.App. 3d 910, 932, 152 Cal.Rptr. 854, 867-868 (1979), *cert. denied*, 48 U.S.L.W. 3354 (U.S. Nov. 26, 1979) (No. 79-558).

In a Brief Amicus Curiae in Support of the Petition for a Writ of Certiorari in the *Riverside* case, the Lutheran Church in America was joined by eight other hierarchical denominations in urging this Court to clarify the law "to avert the state of chaos which unclear understandings of the reach of *Jones* v. *Wolf* and its modification of the settled principles of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), have already threatened."

The rights of a significant number of church-going Americans are affected by the confusion which exists in this area of the law. This Court should grant a writ of certiorari here and provide much-needed guidance to the lower courts.

CONCLUSION

For the foregoing reasons, and for the reasons stated in their earlier Petition, petitioners respectfully urge the Court to grant a writ of certiorari, to reverse the decision below, and to remand the case to the Supreme Court of Georgia with appropriate instructions.

Respectfully submitted,

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